

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NEW YORK LIFE INSURANCE COMPANY,

Plaintiff,

v.

No. 2:22-cv-813 GJF/KRS

PAUL M. ARAGON,
JOSEPH E. FITZPATRICK, III,
and DANIEL FITZPATRICK,

Defendants.

ORDER QUASHING ORDER TO SHOW CAUSE AND SETTING DEADLINES

THIS MATTER comes before the Court on Plaintiff's "Letter to Clerk of Court as a Response to Order to Show Cause," (Doc. 10), filed May 3, 2023, which the Court construes as a response to the Court's Order to Show Cause, (Doc. 9). In the Order to Show Cause, the Court noted that waivers of service filed on the docket indicate that responsive pleadings were due in November 2022 for Defendants Joseph Fitzpatrick and Daniel Fitzpatrick, and in February 2023 for Defendant Aragon, and that no Defendant has filed an answer or other responsive pleading. (Doc. 9). Accordingly, the Court ordered Plaintiff to show cause why this case should not be dismissed for failure to prosecute.

In the letter to the Clerk of Court, Plaintiff's counsel states he has made "multiple unsuccessful efforts to contact the parties to move this matter forward." (Doc. 10) at 1. He states that Defendants Daniel Fitzpatrick and Joseph Fitzpatrick "have advised that they do not intend to retain legal counsel, but they want to participate in the case," and that Defendant Aragon is presently incarcerated at the Torrance County Detention Facility, has not retained legal counsel, and "has advised Plaintiff through a handwritten letter received on or about February 2023 that he 'would like to receive the benefits of this claim.'" *Id.*; (Doc. 10-1) (Exhibit A

attached to Plaintiff's letter). Plaintiff's counsel states: "With permission of the Court, Plaintiff is prepared to treat Aragon's handwritten letter as an answer, seek a clerk's entry of default against Daniel and Joseph for their failure to appear and/or answer the Complaint, and then move to deposit the funds at issue in this matter with the Court for the Court to determine the proper beneficiary(ies) of the life insurance policy." (Doc. 10) at 2.

First, Plaintiff's response to the Court's Order to Show Cause was improperly filed as a letter to the Clerk of the Court. The Court will nevertheless construe the letter as a response to the Order to Show Cause, but directs Plaintiff's counsel to follow the Court's Local Rules regarding proper formatting for all documents filed in this case. *See* D.N.M. LR-Civ. 10.1, "Form of Documents." The Court quashes its Order to Show Cause based on the statements made in Plaintiff's letter.

Second, the Court will construe Defendant Aragon's letter, attached to Plaintiff's letter at Document 10-1, as an answer to Plaintiff's Complaint. Plaintiff's counsel shall file the letter and envelope (Document 10-1, pages 1-2) on the docket as an answer by Mr. Aragon, and shall take care when filing the envelope that Mr. Aragon's address is legible. *See* (Doc. 10-1) at 2 (Mr. Aragon's address is not completely visible so the Court is unable to add his contact information to the docket). Plaintiff shall do so no later than May 15, 2023.

Finally, to the extent Plaintiff's counsel seeks an order or other action from the Court, Plaintiff has improperly made this request in a letter and not by motion. *See* D.N.M. LR-Civ. 7.1(a) ("A motion must be in writing and state with particularity the grounds and the relief sought."). Plaintiff's counsel indicates he will seek default judgment against Defendants Daniel Fitzpatrick and Joseph Fitzpatrick and then move to deposit the funds at issue with the Court.

(Doc. 10) at 2. The Court takes no action as to these statements since there is not a motion before the Court. The Court will allow Plaintiff until May 24, 2023 to pursue its cause of action.

IT IS THEREFORE ORDERED that the Courts' Order to Show Cause, (Doc. 9), is hereby QUASHED.

IT IS FURTHER ORDERED that **on or before May 15, 2023**, Plaintiff's counsel shall file the letter and envelope at Document 10-1 as an answer by Mr. Aragon, and shall ensure that Mr. Aragon's address is legible.

IT IS FURTHER ORDERED that **on or before May 24, 2023**, Plaintiff shall take action as to the remaining Defendants in this case.



KEVIN R. SWEAZEA
UNITED STATES MAGISTRATE JUDGE